

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES P. VERDREAM,

Movant,

v.

No. CV 20-481 WJ/CB
No. CR 18-925 WJ

UNITED STATES OF AMERICA,

Respondent.

ORDER GRANTING LEAVE TO AMEND AND NOTIFYING MOVANT

THIS MATTER is before the Court on the handwritten filing (the “Motion”) by Movant James P. Verdream on May 14, 2020. (CV Doc. 1); (CR Doc. 79). The Court has reviewed the docket in criminal case No. CR 18-925 WJ. Mr. Verdream’s Motion challenges his criminal defense counsel’s actions in connection with the sentencing phase in CR 18-925 on the grounds of ineffective assistance of counsel. (CV Doc. 1 at 1-2); (CR Doc. 79 at 1-2). The Court intends to recharacterize Mr. Verdream’s Motion as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when:

a court recharacterizes a pro se litigant’s motion as a first § 2255 motion . . .the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restriction on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Mr. Verdream that it intends to recharacterize his Motion as a first § 2255 motion and afford him an opportunity to

withdraw the motion or to amend it to add additional claims he may have. See Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: "(1) specify **all grounds** for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.") (emphasis added). If Mr. Verdream fails to timely amend or withdraw his Motion, then Mr. Verdream's Motion will be recharacterized and any subsequent § 2255 motions will be subject to the restriction on "second or successive" motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS THEREFORE ORDERED that Movant James P. Verdream is **GRANTED** leave to amend or withdraw his Motion, (CV Doc. 1), (CR Doc. 79), which the Court intends to recharacterize as a first motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, by **June 22, 2020**.

IT IS FURTHER ORDERED that the Clerk of the Court **MAIL** a copy of this Order, together with a form § 2255 motion and instructions, to Mr. Verdream.

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE